

INTERIM RATE DS3 LOOP AMENDMENT
ORDER NOTIFICATION

To: SBC PACIFIC BELL TELEPHONE COMPANY
Contract Administration
Four SBC Plaza, 9th Floor
Dallas, TX 75202
1-800-404-4548

FROM: _____
(CLEC Name)

FAX NUMBER: _____ TELEPHONE: _____

Email Address: _____

AGREEMENT PREPARATION INFORMATION:

CLEC LEGAL NAME _____

MAILING ADDRESS – STREET _____

CITY/STATE/ZIP CODE _____

TELEPHONE NUMBER _____

STATE OF INCORPORATION (IF APPLICABLE) _____

OCN/AECN _____

OFFICIAL NOTICE TITLE & NAME _____

TELEPHONE NUMBER _____

OFFICIAL NOTICE ADDRESS (**CANNOT BE P.O. BOX**) _____

OFFICIAL NOTICE CITY/STATE/ZIP _____

PLEASE LIST THE TYPE OF AGREEMENT AND
ENTITY NAME THAT THIS REQUEST WILL AMEND.
EX: "INTERCONNECTION-ABC COMPANY" _____

Please note that you should expect to receive the amendment within 10 business days from date
of this facsimile.

**AMENDMENT TO
INTERCONNECTION AGREEMENT
BETWEEN**

**PACIFIC BELL TELEPHONE COMPANY d/b/a
SBC PACIFIC BELL TELEPHONE COMPANY
AND
XO CALIFORNIA, INC.**

WHEREAS, Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company ("Pacific"), formerly Pacific Bell and XO California, Inc.] ("CLEC") ("collectively referred to as the "Parties") entered into an Interconnection Agreement which became effective on March 1, 2000 ("the Agreement");

WHEREAS, the Agreement permits the Parties to mutually amend the Agreement in writing;

WHEREAS, for purposes of Pacific's federal 271 application for California pending before the Federal Communications Commission ("FCC"), in WC Docket No. 02-306, for approval to provide in-state interLATA service pursuant to 47 U.S.C. §271, Pacific is making available to CLECs in California a certain interim DS3 Unbundled Network Element ("UNE") Loop recurring rate, as set forth below, upon the terms and conditions set forth herein;

WHEREAS, this amendment ("Amendment") shall be deemed effective upon execution by both Parties ("Amendment Effective Date"), but shall be subject to Commission approval;

WHEREAS, this Amendment shall only be available to those CLECs in California who have or obtain the Amendment for Interim Rate DS1/DS3 Loops Amendment, previously announced by Pacific in Accessible Letter CLECC02-267;

NOW THEREFORE, the Parties agree to amend the Agreement based upon the following terms and conditions:

(1) The Agreement is hereby amended to replace the recurring rate for a DS3 UNE Loop currently set forth in such Agreement with the following interim recurring rate for a DS3 UNE Loop, effective as of the Amendment Effective Date:

Interim DS3 UNE Loop Recurring Rate (statewide average rate only): \$573.20

(2) This Amendment shall not modify the nonrecurring rate for the DS3 UNE Loop currently set forth in the Agreement, but rather, such nonrecurring rate shall continue to apply to the DS3 UNE Loop.

(3) For any DS3 UNE Loops CLEC has in service on the Amendment Effective Date, the interim DS3 UNE Loop recurring rate set forth above in this Amendment shall be effective between the Parties as of the Amendment Effective Date.¹ Pacific will calculate and apply to CLEC's bill any applicable credits or charges due CLEC as a result of such pricing change.

¹ Notwithstanding anything to the contrary in the Agreement (including, as applicable, this Amendment and any other Amendments to the Agreement ("Agreement")), in the event that any other telecommunications carrier should adopt provisions in the Agreement pursuant to Section 252(i) of the Act ("Adopting CLEC") after the effective date of a particular rate change, that rate change shall only apply prospectively beginning from the date that the MFN provisions becomes effective between Pacific and the Adopting CLEC following the Commission's order approving the Adopting CLECs Section 252(i) adoption or, the date such Agreement is deemed approved by operation of law ("Section 252(i) Effective Date"), and that rate change would not in any manner apply retroactively prior to the Section 252(i) Effective Date.

(4) The Parties agree that any billing adjustments and payments made in accordance with this Amendment are not subject to Pacific's obligations under the Service Performance Measurements and that liquidated damages shall not apply to any adjustment or credits made in connection with this Amendment and will not be included in or affect any past, current or future performance measurement results.

(5) The Term and Termination provisions set forth in the Agreement shall not apply to the rates, terms and conditions being incorporated into the Agreement by this Amendment. Rather, this Amendment, including the interim DS3 UNE Loop recurring rate set forth herein, will automatically terminate on the date the CPUC approves an interim or final DS3 UNE Loop recurring rate in Application 01-02-024/A.01-02-035, the CPUC's Unbundled Network Element (UNE) Reexamination for Pacific Bell Telephone Company, at which time the interim DS3 UNE Loop recurring rate set forth in this Amendment would automatically be replaced by the DS3 UNE Loop recurring rate established by the CPUC in such proceeding, subject to any appeals and associated review, and the Parties would engage in a true-up of the Commission-established DS3 UNE Loop recurring rate(s) retroactive to September 20, 2002, as to any DS3 UNE Loops that CLEC had in service during such true-up period (i.e., the true-up would be based upon the difference between the final Commission-established DS3 UNE Loop recurring rate and the recurring rate(s) paid by CLEC for DS3 UNE Loops during the true-up period), including the payment of refunds or recovery of surcharges, as applicable. If the actions of the State of California or legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis or rationale for this Amendment, including but not limited to a decision by the FCC in its pending Notice of Proposed Rulemaking, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, FCC 01-361 (rel. Dec. 20, 2001) ("Triennial Review UNE rulemaking") finding that Loops or DS3 Loops are no longer a UNE, then this Amendment shall be invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either party. In the event of any such actions, the Parties shall expend diligent efforts to arrive at an agreement respecting the appropriate modifications to this Amendment. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in the Agreement. The Parties further acknowledge and agree that by executing this Amendment, neither Party waives any of its rights, remedies or arguments with respect to any regulatory, judicial or legislative action, including but not limited to the Triennial Review UNE rulemaking and *United States Telecom Association, et. al v. FCC*, No. 00-101 (D.C. Cir. 2002).

(6) The Parties acknowledge and agree that the rates set forth in this Amendment are each legitimately related to, conditioned on and consideration for, every other term and condition in this Amendment.

(7) EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS IN THE UNDERLYING AGREEMENT REMAIN UNCHANGED.

(8) Notwithstanding any other change of law provision in the Agreement, the Parties acknowledge and agree that in entering this Amendment neither Party is waiving any of its rights, remedies or arguments with respect to any orders, decisions or proceedings and any remands thereof, including but not limited to its rights under the United States Supreme Court's opinion in *Verizon v. FCC*, 535 U.S. ____ (2002); the D.C. Circuit's decision in *United States Telecom Association, et. al v. FCC*, No. 00-101 (May 24, 2002); the FCC's Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, (FCC 99-370) (rel. November 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000) in CC Docket 96-98; or the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68 (the "ISP Intercarrier Compensation Order") (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). Rather, in entering into this Amendment, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings, including but not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement. The Parties further acknowledge that they have executed an amendment superseding certain compensation, interconnection and trunking terms ("Reciprocal Compensation Amendment"). Until the expiration of such Reciprocal Compensation Amendment, the

Parties agree not to exercise their intervening law rights for any reciprocal compensation, point of interconnection or trunking requirements that are subject to the Reciprocal Compensation Amendment. By executing this Amendment, neither Party waives any of its rights that it may have at the time of, or that arise after, the expiration of the Reciprocal Compensation Amendment and expressly reserve all of their respective rights, under the ISP Intercarrier Compensation Order, or any other regulatory, legislative or judicial action.. In the event that the FCC, a state regulatory agency or a court of competent jurisdiction, in any proceeding, including without limitation, in the FCC's Notice of Proposed Rulemaking, Review of Section 251 Unbundling Obligations of *Incumbent* Local Exchange Carriers, CC Docket No. 01-338, FCC 01-361 (rel. Dec. 20, 2001) ("Triennial Review UNE rulemaking"), finds rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement and this Amendment do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party. In such event, the Parties shall have sixty (60) days from the effective date of the order to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the effective date of the order, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed in triplicate on the date(s) shown below by their respective duly authorized representatives.

XO CALIFORNIA, INC.

Pacific Bell Telephone Company d/b/a
SBC Pacific Bell Telephone Company
By SBC Telecommunications, **Inc.**,
its authorized agent

By: _____

By: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: *For/* President-Industry Markets

Date: _____

Date: _____

AECN/OCN # _____